

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5621 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRA @ BABLU BHOJUMAL SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR ND GOHIL ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/99

ORAL JUDGEMENT

The petitioner in this writ petition has challenged the detention order dated 3.7.1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short PASA) and has prayed for his immediate release from illegal detention.

From the grounds of detention, it appears that due to registration of two cases under Bombay Prohibition Act and statements of two confidential witnesses that the

Detaining Authority was satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order was passed which is under challenge in this writ petition on the sole ground that the activities of the petitioner were not prejudicial for maintenance of public order and at the most it could be said to be incident between individual viz, petitioner and the two witnesses on two occasions not exceeding the limits of law and order situation.

From the registration of two cases under Bombay Prohibition Act and statements of two confidential witnesses, the Detaining Authority was justified in reaching the subjective satisfaction that the petitioner is a bootlegger. In two registered cases huge quantity of foreign liquor was recovered. The two confidential witnesses also narrated about the bootlegging activities of the petitioner. Thus, the subjective satisfaction of the Detaining Authority that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA requires no interference.

So far as the activities of the petitioner being prejudicial for maintenance of public order is concerned, the learned Assistant Government Pleader contended that in one registered case huge quantity of foreign liquor measuring 842 ltrs. worth Rs.3,39,000/- and in another case foreign liquor measuring 912 ltrs. worth Rs.4,25,650/- were recovered, hence, the petitioner was rightly detained. However, recovery of huge quantity of foreign liquor cannot be a ground for believing that at the time of such recovery, the petitioner created situation prejudicial for maintenance of public order nor recovery of huge quantity of foreign liquor per se can be a ground for subjective satisfaction that on two occasions the petitioner created situation prejudicial for maintenance of public order. Nothing is said in the ground of detention that when huge quantity of foreign liquor was recovered from the petitioner, he misbehaved with the Recovery Officer or created situation before the Recovery Officer which was prejudicial for maintenance of public order. As such recovery of huge quantity of foreign liquor is no ground for inferring that the petitioner's activities on those two occasions were prejudicial for maintenance of public order. So far as the statements of two confidential witnesses are concerned taking on the face value that those statements are correct it cannot be said that such incidents created situation prejudicial for maintenance of public order but it can be said that the situation was within the ambit of

law and order and this could be tackled under ordinary law and not that the petitioner could be detained under PASA.

It has also been contended by the learned Assistant Government Pleader that the statements of two confidential witnesses relate to incidents at public places like educational institution and religious place and as such the activities of the petitioner were prejudicial for maintenance of public order. It is not the place where such activities take place that is material but what is material is that the potentiality of the incident or the activity should be such which had the effect of disturbing even tempo of the life of the locality or the community where such incidents took place. It is not indicated in the grounds of detention that simply because two witnesses prohibited the petitioner from transporting foreign liquor or any other type of liquor near educational institution and public place like temple, students of the educational institution or teachers imparting education were disturbed because of the activities of the petitioner transporting foreign liquor near the said institution. It is also not clear from the grounds of detention that the students or teachers were so afraid and terrorised because of the activities of the petitioner that they decided not to go to the school and the school was closed for few days. Similarly it is not indicated in the grounds of detention that the devotees in the temple or priest in the temple were so terrorised that they were forced to leave the temple and the scantity of the temple was affected in any manner. There is also no indication that the foreign liquor was to be stored in the premises of the temple or the school.

Since situations prejudicial for maintenance of public order were not created by the petitioner, the impugned detention order cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The order of detention dated 3.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt